

## REMARKS

Claims 9-16 are pending in the present application.

The claims have been amended to more particularly point out and distinctly claim applicants' invention. Applicants have rewritten dependent claim 12 as new independent claim 14, incorporating the subject matter of claims 9 and 11, from which claim 12 depends. New independent claim 14 incorporates the subject matter of claims 9, 11 and 12. New claims 15 and 16 parallel claims 10 and 13 but depend from new claim 14. The new claims are fully supported by the application as filed, and incorporate no new matter.

Claim 12 is objected to as being dependent on a rejected base claim. Applicants gratefully note that the Examiner states that this claim would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims, and that claim 13 would also be allowable because it depends from claim 12. Applicants have rewritten claim 12 as new claim 14. Claim 13 has been reproduced as new claim 15, dependent from new claim 14. Claim 10 has been reproduced as new claim 16, dependent from new claim 14. It is believed that each of new claims 14, 15 and 16 are allowable.

The Examiner has withdrawn the allowance of claims 9-11, carried out an additional search, and entered a new rejection based on the results of the additional searching. Office actions on the merits of this case have been previously mailed on June 5, 2002, November 22, 2002, October 10, 2003, April 27, 2004, August 5, 2004, May 19, 2005, and September 9, 2005.

Claims 9-11 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 818,303 ("Seaman"). This rejection is respectfully traversed, and reconsideration and withdrawal of the rejection are respectfully requested.

The Examiner states that regarding claim 9, Seaman discloses a latch comprising a housing (1), a lever handle (15) mounted on the housing and being rotatable by an operator between a first position and a second position, and a pawl (6) mounted for substantially linear motion, and being actuated by rotation of the lever handle and traveling substantially linearly between an open position and a closed position as the lever handle is rotated between the first position and the second position. The Examiner further states that the pawl is mounted to travel between the open position along a first path and an intermediate position mount to travel in a second path in an upward direction substantially perpendicular to the first path between the intermediate position and the closed position, referencing attachment #1 to the Official Action. With respect to claims 10 and 11, the Examiner states that Seamen illustrates that the first and second path are linear.

Commenting upon applicants' prior arguments in this case, the Examiner states that in case the applicants argue that Seamen fails to disclose that the pawl moves in a linear motion, the applicants are reminded that the claim language requires that the motion is substantially linear motion. The Examiner further states that substantially linear motion means that the motion is almost, approximately, or close to linear.

Seaman discloses a sash fastener having a "gravity-bolt in the nature of a swinging arm 6" (page 1, lines 65-67). The "tumbler 13 does not operate to lock the bolt, but is used solely to retract the latter" (page 2, lines 23-25). The "tumbler is located below and adjacent the lower free end of the swinging bolt and is designed to engage the lower free end of the bolt, as shown in Fig. 3. of the drawings, to swing said bolt inwardly and rearwardly, so as to disengage the same from its keeper" (page 2, lines 3-9).

Seamen does not anticipate the presently claimed invention because Seamen does not disclose a latch meeting each and every one of the limitations of present claim 9.

First, it is unclear what the Examiner is attempting to convey with Attachment #1. The lines that the Examiner has added do not accurately represent the actual motion of the “swinging” tumbler on the lower pin. Gravity requires that the upper surface of the lower arcuate slot in the tumbler engage the upper surface of the lower pin at all times, and to trace out an arcuate, non-linear path. In the intermediate position the Examiner has drawn, the tumbler is floating off the pin surface, in contravention of gravity.

Assuming the Examiner is attempting to approximate different portions of arcuate path actually traced out by the pin with the Attachment #1 lines as the tumbler swings, Seaman still does not meet all the limitations of claim 9.

In particular, claim 9 requires that “the pawl be mounted to travel in an upward direction substantially perpendicular to the first path” (emphasis added). The two “paths” that the Examiner has drawn in Attachment #1 differ by about 25 degrees. They are not “substantially perpendicular” and the cited art fails to meet this express limitation in claim 9.

In addition, the pawl is required to be “actuated by rotation of the lever handle” and to travel “substantially linearly between an open position to a closed position as the handle is rotated to between the first position and the second position. In the cited reference, the swinging bolt is released by rotation of the tumbler to swing in an arcuate manner from the open position to the closed position. Seaman clearly considers the motion of his “swinging bolt” to be rotational rather than linear. It is respectfully submitted that the motion of Seaman’s swinging bolt is not substantially linear, and the tumbler does not actuate the swinging bolt, but merely releases it as the tumbler is turned.

In addition, in present claim 9 “the pawl is mounted to travel in a second path in an upward direction . . . between the intermediate position and the closed position” (emphasis added). However, in Seaman's sash lock, the swinging bolt travels downward under the force

of gravity when the swinging bolt is released by rotation of the tumbler. Thus, to the extent that the rotational swinging motion of Seaman's bolt is encompassed by applicants' "substantially linear" language, the pawl is traveling in a downward direction between the intermediate position and the closed position, exactly contradicting the requirement of claim 9.

To summarize, the cited reference fails to disclose at least four limitations of claim 9, including:

- (a) a second path substantially *perpendicular* to a first path;
- (b) a pawl traveling in an *upward direction* along the second path;
- (c) a pawl being *actuated by* rotation of the lever handle (rather than merely being released); and
- (d) a pawl mounted for *substantially linear* motion.

These limitations of the presently claimed invention are not met by the cited reference. Since there is at least one limitation that the reference does not meet, Seaman does not identically disclose the presently claimed invention, and Seaman therefore does not anticipate it.

As to dependent claims 10 and 11, these add additional limitations to those of independent claim 9. Because Seaman does not meet the limitations of claim 9, it cannot anticipate either of the dependent claims 10 and 11.

Reconsideration and withdrawal of the rejection entered under 35 U.S.C. 102(b) are respectfully requested for these reasons.

Further, the presently claimed invention is not obvious over the cited art. There is nothing in Seaman's to suggest applicants' presently claimed invention. To modify Seaman's tumbler 6 in order to attempt to meet the limitations of applicants' claims would render Seaman's sash lock inoperative.

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Withdrawal of the rejection entered under 35 U.S.C. 102(e), and an early notice of allowance of all claims, are respectfully requested.

Respectfully submitted,



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